

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

KENNY DREW SAYRE,

Plaintiff,

v.

CIVIL ACTION NO. 2:11-cv-00284

TRUSTEE CLERK,

Defendant.

ORDER

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has filed Proposed Findings and Recommendation (“PF&R”) [Docket 11], recommending that the court find that the plaintiff, while incarcerated or detained, has filed more than three actions that were subsequently dismissed as frivolous, malicious, or for failure to state a claim. The Magistrate Judge further recommends that the plaintiff’s present Complaint [Docket 1], for which he has not paid the requisite filing fee, fails to allege that he is under imminent danger of serious physical injury. Under the Prison Litigation Reform Act of 1995, a prisoner who has had three or more prior cases dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted may not proceed without prepayment of fees unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The PF&R thus recommends that the court **DISMISS** this action with prejudice pursuant

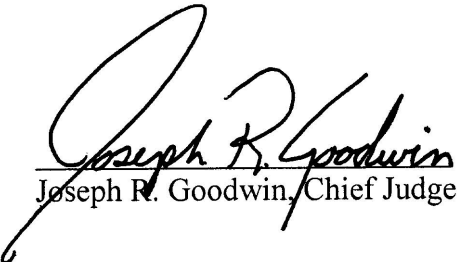
to 28 U.S.C. § 1915(g). Neither party has filed objections to the Magistrate Judge's findings and recommendations.

A district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

As the parties have not filed objections in this case, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **DISMISSES with prejudice** the plaintiff's Complaint [Docket 1], and **DIRECTS** this action to be removed from the docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: June 27, 2011


Joseph R. Goodwin, Chief Judge